IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No.613 of 2004
in
MISC.CIVIL APPLICATION No 1035 of 2003
in
SPECIAL CIVIL APPLICATION No.7453 of 2001

WITH
CIVIL APPLICATION No.1240 of 2004
in
LETTERS PATENT APPEAL No.613 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.S.GARG
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRANBHAI FULTORIA

Versus

RECOVERY MAMLATDAR

Appearance:

1. LETTERS PATENT APPEAL No. 613 of 2004

MR BP GUPTA for Appellant No.

RULE NOT RECD BACK for Respondent No. 1-2,4
MR PRANAV V SHAH for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE R.S.GARG
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 06/05/2005

ORAL JUDGEMENT (Per : HON'BLE MR.JUSTICE R.S.GARG)

Parties are finally heard. The facts for proper appreciation of the matter in nutshell are that respondent no.4-Akhil Gujarat General Majdoor Sangh obtained an order in their favour on 31.03.1998 from the Labour Court, Ahmedabad in Reference (LCA) No.109 of 1997. As the said judgement debtors were not observing the terms of the award Recovery Applications No.2835 of 2000 to 2882 of 2000 were filed by respondent no.4. Besides an application being Payment of Wages Application No.505 of 1999 was filed before the Authority under the Payment of Wages Act. The same was allowed by order dated 05.10.2000. The petitioner then made an application to the Registrar, Labour Court, Ahmedabad for issuance of recovery certificate in the month of December 2000. The Authority issued recovery certificate on 21.12.2000 against Bhavya Car Leasing Club and Messrs Bhavya Developers. The recovery was for a sum of Rs.2,76,24,000/- and expenses of Rs.10,000/-. Despite the said recovery certificate the recovery could not be effected. Therefore, respondent no.4-Akhil Gujarat General Majdoor Sangh filed Special Civil Application NO.7453 of 2001 in this Court against the Recovery Mamlatdar, Ahmedabad; Collector, Ahmedabad; and DDD, District Panchayat Office, Ahmedbaad, seeking a direction that the said respondents be asked to effect the recovery. It is to be noted that the present appellant-Pranbhai Fultoria was not initially joined as party respondent in Special Civil Application. It, however, appears that learned counsel for said original petitioner made an oral request to the learned Judge for joining the present appellant as party respondent no.4. The oral request was allowed and the present appellant came to be joined as party respondent no.4.

2. The submission of the appellant is that a false affidavit of service was filed by the said petitioner, but after some time the present appellant received a copy

of the notice and engaged counsel. The case was listed before the learned Single Judge on 23.04.2003 in 2nd Board, the learned Single Judge informed the advocates present in the Court that if anybody wants an adjournment in relation to the cases appearing in the 2nd Board they need not wait and may give a chit for adjournment to the Court Master. According to the appellant his counsel gave a chit to the Court Master, but unfortunately the request for adjournment was not brought to the notice of the Court as the chit was misplaced, the learned Single Judge passed final order. Immediately after final order came to the notice of the present appellant he made Misc. Civil Application No.1035 of 2003 for recall of the order dated 23.04.2003. The said application has been rejected by the learned Single Judge on 19.08.2003. Being aggrieved of that the appellant is before this Court.

3. Mr.Gupta, learned counsel for the appellant submits that no orders for joining the appellant could be passed and in any case his application for restoration could not be rejected. His submission is that a certificate for recovery is to be executed as it is and in a writ application, seeking directions for execution of the said recovery certificate the present appellant could not be joined to complicate the matter and/ or have undue mileage against the appellant.

4. Referring to order dated 19.08.2003, Mr.Japee, learned counsel for the respondents submitted that the learned Single Judge has clarified the fact that a direction for recovery has been issued against original respondents no.1 to 3 and no order has been passed against the interest of the present appellant. He submits that as the learned Single Judge has clarified the legal position and has further observed that the presence of the present appellant was not necessary hence the appellant need not bother. His further submission is that if recovery officer comes to the conclusion that the present appellant is also answerable then only recovery would be effected against him.

5. The admitted fact is that the appellant was not a party before the Labour Court. It is further to be clarified that he was not a party before the Labour Court either in his personal capacity or as owner/ proprietor of the establishment or as a Director of the said establishment, if the same is taken to be a private company or a public limited company. The Labour Court made award against Bhavya Car Leasing Club and Messrs Bhavya Developers. It is trite law that an order, decree or award can be executed only against the persons who are

party to the said order, decree or award. The appellant not being a party to the original proceedings and no order having been issued against him by any competent court or forum, a recovery certificate obviously could not be issued against him and probably for this reason only the concerned authority under Payment of Wages Act did not issue any recovery certificate against the appellant. It is not known to anybody that in what capacity the present appellant was joined as respondent no.4 for the first time in Special Civil Application before the learned Single Judge. On being asked Mr.Japee says that the appellant may be proprietor or owner of Bhavya Leasing Club or Bhavya Developers or may be a Director if the said establishment is a private company or public limited company. In our opinion in absence of specific statement a person who was not a party before the Labour Court and against whom no recovery certificate had been issued could not be joined as party respondent in a Special Civil Application which is filed complaining inaction on the part of respondents no.1 to 3. Probably, appreciating the said legal position the learned Single Judge had observed that, 'presence of respondent no.4 and affording any opportunity of hearing to him is not necessary'. From the final judgement dated 23.04.2003 passed in Special Civil Application No.7453 of 2001 it would clearly appear that the learned Single Judge has directed the statutory authorities to make recovery from the employer. If that be so, and the learned Single Judge was of the opinion that presence of respondent no.4, i.e. present appellant was not necessary then the appellant ought not to have been joined as party respondent no.4.

6. Be that as it may, we would simply clarify the position that neither there is an order/ award by the Labour Court against respondent no.4 the present appellant nor is there recovery certificate against the interest of the present appellant and the learned Single Judge has not issued any directions to the statutory authorities to make any recovery from the present appellant. This we are required to clarify because the appellant apprehends a foul play under the hands of original petitioner that taking advantage of the order passed by the learned Single Judge and his joinder as party respondent, original petitioner may try to persuade the Recovery Officer to effect recovery against the present appellant. It is further made clear that the Recovery Officer would not be entitled to go beyond the recovery certificate and would not take any action for recovery against the present appellant.

7. The Appeal to the extent indicated above with the clarification above is allowed. No costs.

8. As the Appeal is disposed of no orders are required on Civil Application No.1240 of 2004. The Civil Application is disposed of accordingly. Notice is discharged.

(R.S. Garg, J.)

(Ravi R. Tripathi, J.)

karim